August 3, 2017

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Sovereign Councils of the Hawaiian Homelands Assembly

Re: *Request to Reconsider FCC's Memorandum Opinion and Order Dated July 3, 2017 in the Matter of Connect American Fund, Sandwich Isles Communication - WC Docket No. 10*-90 CC Docket No. 96-45

Aloha Ms. Dortch:

My name is Robin Puanani Danner, and I am the elected chairman of the Sovereign Councils of the Hawaiian Homeland Assembly (SCHHA), the oldest and largest organization unifying Hawaiian Home Lands (HHL) community leaders and self-governing homestead associations throughout the state of Hawaii. The SCHHA represents the interests of native Hawaiians eligible under the federal Hawaiian Homes Commission Act (HHCA) of 1921, who are the actual recipients of services provided by Sandwich Isles Communications (SIC) and are the de facto beneficiaries of the FCC's USF and NECA support programs for Hawaiian Home Lands (HHC).

SCHHA, founded in 1987, serves more than 35 native homestead communities and formal self-governing Native Hawaiian Homestead Associations. These federally defined native community organizations are under Federal law protection, with homelands held in trust by the State of Hawaii pursuant to Federal native affairs statues and the state enabling act, so the lands are managed under a Federal trust responsibility, comparable to federally recognized Indian Tribes with their trust lands reserved by the United States under treaty, statute and state enabling acts.

Under the Code of Federal Regulations (CFR) 43, part 47 and 48, the federal government defines our self-governing Homestead Associations for purposes of the HHCA as follows:

> *A [native] beneficiary controlled organization that represents and serves the interests of its homestead community; has as a stated primary purpose the representation of, and provision of services to, its homestead community; and filed with the Secretary a statement, signed by the governing body, of governing procedures and a description of the territory it represents.*

As a coalition of self-governing Homestead Associations, the SCHHA elects its Chairman and Vice Chairman every 4 years, to lead its executive council in serving more than 10,000 native Hawaiian families with HHCA land awards, and more than 27,000 native Hawaiians awaiting a land award. We represent the collective rights of our Homestead Associations and native Hawaiian homesteaders who reside on and access our trust lands, and fulfill the purposes of our land trust. We are similar to the Central Council of Tlingit Haida Indian Tribes of Alaska, with its 50 constituent villages and 28,000 tribal members.

Request for Reconsideration

We file our request for FCC Reconsideration of its above referenced Memorandum Opinion and Order, based on flawed data that the opinion appears to rely upon. The FCC order states that the Department of Hawaiian Home Lands, a state government agency issued an exclusive license that violates the Communications Act, section 253(a), wherein in *"No State or Local Statute or Regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service"*.

We come forward as the SCHHA to put into the record and to request reconsideration, that federal law protects the actions in 1995 to issue an exclusive license to a native Hawaiian organization based on the following:

DHHL is indeed a State Agency, mandated to be created under federal law, the Hawaii Admissions Act of 1959 to administer a federally established land trust, that the federal government retains oversight and the Congress continues to exercise its plenary power to address the best interests of America's First Peoples, namely, American Indians, Alaska Natives and Native Hawaiians. In short, DHHL is a state agency with a unique federal statutory mandate.

DHHL exercises this Federal mandate to protect and assist the native Hawaiian communities because the Office of the Secretary of the Interior is 5,000 miles away! When Alaska was a territory, the Territory of Alaska was delegated Indian affairs power and upon statehood, the State of Alaska was delegated Federal statutory power to exercise law law enforcement and civil justice authority over Alaska Native affairs. *Compare Ex Parte Crow Dog*, 109 U.S. 566 (1883).

Native Hawaiian rights flow from the original, inherent, inalienable sovereign, self-governing authority of the Hawaiian people, and the Federal Government has no more authority to enter Native Hawaiians for a statutory purpose at odds with our native Hawaiian homelands than it would to enter an Indian tribes' lands without congressional statutory or treaty authority because Federal law reserves our native trust lands as our Hawaiian Homelands—just like Indian reservations.

Following are federal laws that cannot be ignored by the FCC in conducting its due diligence before issuing an action that disenfranchises the rights of SCHHA and our members:

1) **1921 Hawaiian Homes Commission Act** – Recognizes native Hawaiians as Native Peoples Under the Indian Affairs and War Powers and Establishes Home Land Trust

   A federal law, enacted by Congress, established a firm trust relationship with native Hawaiians and a federal land trust like Indian land allotments enacted in the late 1800s and early 1900s. This Act, establishes that all 203,000 acres set-aside and defined by Congress, would be managed and administered for the benefit of native Hawaiians (a clear federal trust) by issuing lands as follows:

   a) **Section 207 (a)** of the HHCA – to lease lands for use and occupancy for homes, for ranches and for farms by ONLY native Hawaiians.

   b) **Section 207 (c)(1)** of the HHCA – to grant licenses to public utility companies or corporations as easements for railroads, telephone lines, power, etc.

   c) **Section 207 (c)(1)(A)** of the HHCA – to grant licenses for land for public purposes such as churches, hospitals, public schools, post offices and other public purpose improvements. This is the actual basis of the exclusive license in question.

   d) **Section 207 (c)(1)(B) of the HHCA** – to grant licenses for land for theatres, garages, service stations, markets, stores and other mercantile establishments, all of which SHALL be owned by ONLY native Hawaiians or organizations controlled by native Hawaiians.

Absent Congress's delegation of authority to the State of Hawaii, Federal law would preempt state authority on Native Hawaiian lands.

2) **1959 Hawaii Admissions Act** – Compact with State to Administer w/ Federal Oversight
A federal law, enacted by Congress that established a compact between the Federal Government and the new 50th State that conditioned statehood on the administration of the land trust by the new state, and requires the new state to include the federal HHCA into its state constitution. This must not be misconstrued, as DHHL has asserted, and it appears the FCC is adopting in its opinion, that the lands suddenly became state "public lands". False.

   The compact enabled the new state of Hawaii to take title to the trust lands of the native Hawaiian people, solely for the purposes of administration. Native Hawaiians, not the state, own the beneficial interest and the right to use our Home Lands. Under Section 4 of the Hawaii Admissions Act, clearly states that the Federal government retains oversight, and indeed enacted further federal laws, to specifically name a federal agency responsible on behalf of all of the federal government for protecting the interests of native Hawaiians eligible under the HHCA.

3) **1995 Hawaiian Home Land Recovery Act** – Directs DOI as responsible federal agency
A federal law, enacted by Congress that corrected the misdeeds of State government in taking trust lands out of the trust for its own use, without compensation or replacement to the land trust of native Hawaiians.

   This federal law recognized the breach, and went further to not only reiterate that the federal government retains oversight and its trust relationship created under the HHCA, but specifically names the Department of Interior as the federal government's primary agency to protect and advance the interests of native Hawaiians.

4) **2000 Native Hawaiian Housing Block Grant** – Directs funding to Lands for Housing
A federal law, enacted by Congress to include Title VIII to the Native American Housing Assistance and Self Determination Act (NAHASDA) to meet its obligations to native Hawaiians on trust lands to prepare and access affordable housing opportunities. Funding may only be spent on Hawaiian Home Lands.

5) **2016 Promulgation of Federal Rules for the 1921 HHCA** – Codifies rules in CFR 43
The Department of Interior spent 3 years, promulgating 2 federal regulatory rules for the HHCA pertaining to Land Exchanges and Amendments to the HHCA to ensure federal oversight of its federal land trust. CFR 43 Part 47 and Part 48 specifically define the SCHHA's member organizations, Homestead Associations, and clearly states the role of DHHL, State of Hawaii as an administrator, by no means replacing the federal government in its trustee role.

The trust lands discussed in the FCC opinion, are not mere state public lands, NOR are the acts by DHHL in 1995 to issue an exclusive license for the SIC network a "State or Local requirement" that violates the federal Communications Act cited as Section 253(a). DHHL's actions in support of the use of infrastructure on native Hawaiian for the benefit of our people is state implementation of the Federal trust responsibility—just like the Secretary of the Interior's protection of Indian (Native American) lands.

Rather, the land license was issued under the requirements and authority of another federal law, the Hawaiian Homes Commission Act of 1921, Section 207 (c)(1)(A) for public purposes to "build, construct, repair, maintain and operate" a network to provide telecommunication services. It should be well understood, that the exclusive license issued under the HHCA, falls within other sections of the federal HHCA, specifically, Section 207 (c)(1)(B), wherein SIC and Waimana, are owned by or are organizations controlled by native Hawaiians. The exclusive license issued in 1995, was issued to a native Hawaiian controlled organization, as stated in the HHCA.

SCHHA absolutely agrees that DHHL is a State Agency, however, acting under a federal mandate and compact as an administrator to implement the intent of Congress and the responsibilities of the federal government to our people.

The State of Hawaii, acting in its fiduciary role compacted with the federal government in 1959, issued an exclusive license not as a "State or Local Requirement", but rather as a federal mandate to manage lands and services on our trust lands for the benefit of native Hawaiians. Not only did the exclusive license accomplish that within the mandates of the federal HHCA in Section 207, wherein public bidding is NOT required by the federal government as it is under Section 204, it did so by issuing a license to an organization owned by or controlled by a native Hawaiian beneficiary. Exactly what the federal law of 1921 intended.

Summary

The SCHHA is stating as clearly as possible, that our rights and the collective rights of native Hawaiians under federal law, under the HHCA, the Hawaii Admissions Act, and the HHLRA must not be undermined by the FCC, nor the State of Hawaii, other corporate entities that would tear down the tenets of the HHCA that intend our trust lands to benefit native Hawaiians individually and collectively.

We conclude that the exclusive license issued in 1995 under the public purpose section of the HHCA, is not a State requirement, but rather a federal requirement, and therefore must not be overridden as called for in the FCC order of July 3, 2017.

We further conclude that given the potential for harm by the FCC to our rights as beneficiaries of the native homelands act enacted by Congress, that the FCC should consult directly with Homestead Associations as defined by federal regulations, before issuing any order that may impact the rights or lands of native Hawaiians. The SCHHA has since 2015, repeatedly requested proper consultation.

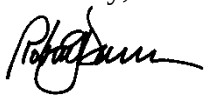
The FCC, as a federal agency, must protect our interests, not just as members of the general public, but as a recognized Native people with a unique federal trust relationship articulated in numerous federal laws enacted by congress.

We come forward to defend and protect our collective rights, as native Hawaiians defined under the federal HHCA, and to demand that the federal government meet its fiduciary obligations as promised in 1921.

At a minimum, we ask the FCC to delay its ruling on its July 3, 2017 order, conduct proper due diligence on the near 100-year old trust relationship established by the U.S. Congress, to confer with the Solicitor General and the Director of the Office of Native Hawaiian Relations at the Department of Interior, and finally, to consult with members of the SCHHA as is common and a best practice of other federal agencies when adopting policies that impact our country's Native peoples.

Thank you for the opportunity to provide comment of this matter of serious interest to the SCHHA and our people.

Sincerely,



Robin Puanani Danner
SCHHA Chairman

CC: SCHHA Executive Council and Homestead Association Members
SCHHA Chairman Emeritus, Kamaki Kanahele